

**DECISION**

*W. H. H.*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-210692**DATE:** June 27, 1983**MATTER OF:** Dictaphone Corporation**DIGEST:**

1. Where the only evidence on an issue of fact is the conflicting statements of the protester and the contracting officials, the protester has not carried the burden of proving its case.
2. Where the conduct of the protester caused the procuring activity to reasonably believe that the protester consented to its employee making an offer, the employee had apparent authority to make the offer and the procuring activity could act in reliance on the offer even if the employee lacked actual authority to make the offer.
3. The burden is on the supplier of an item listed under a Federal Supply Schedule contract to notify the contracting activity of price reductions accepted by the General Services Administration. Where the protester failed to inform the procurement agent of the price reduction and the procurement agent lacked actual notice of the reduction, the procuring activity need not consider the price reduction in determining the low price.

Dictaphone Corporation (Dictaphone) protests the issuance by the United States Secret Service of delivery order No. 83-924 to Lanier Business Products, Inc. (Lanier), for dictation equipment to be installed in the New York, New York, offices of the Secret Service. The Secret Service issued the order under the General Services Administration's (GSA) Federal Supply Schedule contract No. GS-00S-63027. We deny the protest.

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The Secret Service's version of the essential facts of this procurement is as described in the next three paragraphs.

On December 20, 1982, a procurement agent for the Secret Service called Dictaphone to request a price quotation for the dictation equipment. Mr. Broderick from the Dictaphone office in Washington, D.C., quoted the Secret Service a price derived from a previous August 1982 quotation. Also, on December 20, the procurement agent requested a price quotation from Lanier. Mr. Garrity from the New York office of Dictaphone subsequently called the procurement agent on January 6 and January 10, 1983, to increase the trade-in allowance offered by Dictaphone. On January 12, 1983, the Secret Service received a price quotation from Lanier of \$15,843.50, which was low in comparison to Dictaphone's quotation.

On January 12, as the procurement agent prepared to issue a delivery order to Dictaphone, Mr. Garrity again called. In order to impress upon him that the time had come for the Secret Service to place an order and that Mr. Garrity could not continue to modify Dictaphone's quotation, the procurement agent requested a "best and final" quotation. The Secret Service claims that Mr. Garrity again increased the trade-in allowance, thus reducing Dictaphone's quotation to \$16,106.20, which was still high in comparison with Lanier's quotation. By contrast, Dictaphone claims that when Mr. Garrity was informed of the request for a best and final quotation, he instead told the procurement agent that the quotation must come from the Washington office of Dictaphone. In any case, the Secret Service issued a delivery order to Lanier as the low quoter on January 14.

On January 17, Mr. Broderick again called the procurement agent. When informed that a best and final offer had been requested and that a delivery order had then been issued, Mr. Broderick declared that he had been unaware of any request for a best and final offer and stated that only the Washington office, and not the New York office, was authorized to submit quotations for this procurement. Mr. Boss from Dictaphone's Washington office then delivered a new price quotation to the procurement agent on January 18. Dictaphone not only offered a trade-in

allowance and the 13-percent "GSA discount" previously quoted to the Secret Service, but also included a quantity discount of six units for the price of five, thereby lowering the net cost of Dictaphone's quotation to \$15,233.70.

Dictaphone contends that it is open to question when the Secret Service received a proper quotation from Dictaphone. If, by this contention, Dictaphone seeks to raise a factual issue as to the content of Mr. Garrity's January 12 conversation with the procurement agent, we conclude that Dictaphone has failed to prove that Mr. Garrity did not then knowingly offer a "best and final" price quotation to the Secret Service. Where the only evidence on an issue of fact is the conflicting statements of the protester and the contracting officials, the protester has not carried the burden of proving its case. See East Wind Industries, Inc., B-208170, December 29, 1982, 82-2 CPD 587. Therefore, we must conclude that Dictaphone was given an equitable opportunity to submit its "best and final" price quotation.


If, by the above contention, Dictaphone seeks to raise an issue as to Mr. Garrity's alleged lack of actual authority to offer price quotations, we conclude that the procurement agent nevertheless properly acted in reliance upon the January 12 quotation submitted by Mr. Garrity. A principal is bound by the acts of his agent not only when the agent has actual authority to so act, but also when the agent acts with apparent authority. Apparent authority to do an act is created as to a third person by conduct of the principal which reasonably causes the third person to believe that the principal consents to have the act done on his behalf by the agent. Restatement (Second) of Agency §§ 8, 27 (1957). Given Mr. Garrity's position with the New York office of Dictaphone and given his knowledge of the Secret Service's precise needs, which Mr. Garrity demonstrated by the price quotations, the procurement agent had reasonable grounds for her apparent belief that Mr. Garrity was authorized to offer price quotations to the Secret Service.

Dictaphone also contends that the Secret Service "created an ongoing scenario for negotiation" by discussing Dictaphone's quantity discount with the company, even after the award of the order. Although the Secret Service apparently did have the alleged discussions as to the

precise amount of Dictaphone's discount, we see nothing in the record which would indicate that the Secret Service ever formally reopened negotiations with these "discussions" with an intent of receiving new "best and final" quotations from both Lanier and Dictaphone. Therefore, and since the delivery order had already been awarded when these "discussions" were held, Dictaphone's January 18 quotation was properly rejected.

Dictaphone also suggests that its January 12 price quotation should have been found to be low because the quantity discount, although first mentioned to the procurement agent only on January 18, had been accepted by the GSA as a modification to Dictaphone's Federal Supply Schedule contract effective November 24, 1982, and, thus, the quantity discount should have been considered in evaluating Dictaphone's quotation. The burden is on the supplier of an item listed under a Federal Supply Schedule contract to notify the contracting activities of price reductions accepted by GSA. Absent actual notice of the price reduction, the contracting activity need not consider the price reduction in determining the low price. Dictaphone Corporation, B-195043, September 25, 1979, 79-2 CPD 222. Since Dictaphone has not alleged, nor is there any indication in the record, that the procurement agent had received actual notice of the quantity discount, the Secret Service was justified in not considering the discount when it evaluated Dictaphone's "best and final" quotation on January 12.

The protest is denied.

for   
Comptroller General  
of the United States